

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Promoting Diversification of Ownership In)	MB Docket No. 07-294
The Broadcasting Services)	
)	
2006 Quadrennial Regulatory Review –)	MB Docket No. 06-121
Review of the Commission’s Broadcast)	MB Docket No. 02-277
Ownership Rules and Other Rules Adopted)	MM Docket No. 01-235
Pursuant to Section 202 of the)	MM Docket No. 01-317
Telecommunications Act of 1996)	MM Docket No. 00-244
)	MB Docket No. 04-228
)	
)	

**REPLY COMMENTS OF
OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST, INC.
BENTON FOUNDATION
COMMON CAUSE
MEDIA ALLIANCE
NATIONAL ORGANIZATION FOR WOMEN FOUNDATION**

The Office of Communication of the United Church of Christ, Inc. (UCC), the Benton Foundation, Common Cause, Media Alliance, and the National Organization for Women Foundation (NOW) (collectively, *UCC et al.*), by their counsel, the Institute for Public Representation, respectfully submit these reply comments in the above referenced proceedings.¹ In particular, we submit these comments in response to the “S Class License” proposal presented by Media Access Project (MAP) at the FCC’s en banc meeting on July 29, 2008.² This proposal was not included in the *Diversity Order*; nonetheless, it merits further consideration by the Commission.

¹ *Promoting Diversification of Ownership In The Broadcast Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd. 5922 (2007) (“Diversity Order”).

² The text of the proposal is attached to these comments.

An S Class program has the potential to benefit both new and incumbent broadcasters, as well as the public. Broadcasters with excess digital capacity would receive compensation for use of their transmission facilities; new entrants would be given the chance to access spectrum that would otherwise be underused; and the public would benefit from diverse and efficient use of the airwaves. To that end, an S Class program, if properly implemented, could provide significant ownership prospects for minorities and women.

MAP's proposal envisions a voluntary program in which full power television licensees with excess digital capacity could assign portions of their bit streams to socially and economically disadvantaged businesses and Class A television stations. While the qualifying business – the "S Licensee" – would compensate the main broadcaster for use of its transmission facilities, it would be a licensee in its own right, and not merely a spectrum tenant of the main broadcaster. Under MAP's proposal, the S Licensee would have all the attendant obligations and benefits of a licensee, including must-carry rights. The S Licensee would have cognizable legal rights in the spectrum that are not subject to the control of the main broadcaster.³ For example, it may seek renewal at the end of the license term or transfer its license to another qualifying entity. It would also retain its rights in the event that the main broadcaster's license is sold.

MAP's proposal gives the S Licensee the full rights and obligations of a traditional licensee, thus ensuring that the S Licensee will be independent from the main broadcaster and stable enough to succeed in the marketplace. As a result, an S Class program is a significant improvement over proposals where a broadcaster merely leases its digital stream to an eligible

³ MAP's proposal does contain a provision that allows the main licensee to lease back the assigned spectrum from the S Licensee for a maximum of 6 hours per day, should it wish to broadcast in high definition.

entity for a rental fee. Instead, an S Licensee would hold a bona fide license and valuable collateral with which to obtain the financing vital to the success of any broadcast venture.

The ability of an S Class program to enhance ownership opportunities for underrepresented groups will depend on the types of applicants eligible to receive an S License. Under MAP's proposal both Class A and socially and economically disadvantaged businesses (SDBs) would qualify for S Licenses.⁴ *UCC et al.* strongly support the adoption of a race and gender-based SDB category for eligible entities, and urge the Commission to utilize an eligible entity definition targeted at facilitating ownership by these underrepresented groups, should it choose to adopt an S License program.⁵ As the FCC has recognized, minorities and women have faced both past and current discrimination that has severely limited their ability to enter and succeed in the broadcast industry.⁶ As a result, the public has been deprived of the service and diverse viewpoints that these groups would have otherwise brought to the airwaves. In this

⁴ Under the Small Business Administration's SDB program, African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, and Native Americans are presumed to qualify as disadvantaged. Other individuals can qualify if they demonstrate that by virtue of certain characteristics or experience – including gender, ethnic origin, and physical handicap – that they are disadvantaged. For a full of list of SDB eligibility criteria see http://www.sba.gov/aboutsba/sbaprograms/sdb/program/sdb_nongroup.html.

⁵ As we noted in our initial comments, we look forward to the FCC Diversity Committee's forthcoming report on eligible entities and anticipate that its findings will assist the adoption of a race and gender-based definition, or at the very least provide direction as to where the FCC must sure-up the evidentiary record in order to support such a definition. *Comments of UCC et al.*, filed July 30, 2008, at 5-6.

⁶ See *Diversity Order* at ¶ 49 (acknowledging that for 20 years the FCC has been aware that minority broadcasters have faced substantial discrimination in the form of No Urban/Spanish dictates); see also Ivy Planning Group, *Whose Spectrum Is it Anyway?: Market Entry Barriers, Discrimination and Changes in Broadcast and Wireless Licensing*, 14 (2000); see also KPMG, *History of Broadcast License Application Process (2000) (Part I)*; KPMG, *Utilization Rates, Win Rates, and Disparity Ratios for Broadcast Licenses Awarded by the FCC (2000) (Part II)*; KPMG, *Logistic Regression Models of the Broadcast License Award Process for Licenses Awarded by the FCC (2000) (Part III)*.

respect, the S License proposal could offer women and minorities the opportunity to license spectrum from which they have been historically excluded.

To date, the FCC has declined to adopt a race and gender-based SDB definition in lieu of a far less tailored “small business” definition.⁷ *UCC et al.* emphasize that the use of a small business category, as currently defined, in conjunction with an S License program would squander any potential benefits the proposal offers. *UCC et al.* share MMTC and other commenters’ concerns that the small business definition adopted by the Commission is far too dilute to result in any measurable benefits for women and minorities.⁸ At the Commission’s own admission, more than half of existing broadcasters would qualify under the small business definition.⁹ Because the small business category is unlikely to target those groups who are underrepresented in broadcast ownership, utilizing such a definition in an S License program would waste an opportunity to facilitate broadcast ownership by women and minorities.

Finally, as with any new program, the Commission must put measures in place prior to implementation to monitor who is receiving S Licenses, and to track whether underrepresented groups are benefitting. As we have pointed out in previous comments, the accurate collection of data on minorities and women is integral to the success of any rules designed to foster ownership by underrepresented groups, however, the FCC’s performance in this regard has been wanting.¹⁰ Should the FCC adopt an S License program, it should not repeat the same mistakes, but instead ensure that processes are in place to assess the effectiveness of S Licenses in increasing opportunities for broadcast ownership by minorities and women.

⁷ *Diversity Order* at ¶9.

⁸ *Comments of the Minority Media and Telecommunications Council*, filed July 30, 2008, at 2.

⁹ *Diversity Order* at ¶8.

¹⁰ *See, e.g. Comments of UCC et al.*, filed July 30, 2008, at 9-11.

CONCLUSION

MAP's S License proposal warrants further consideration by the FCC. This proposal has the potential to open new broadcast opportunities for women and minorities, provided that the FCC implements the program in a way that actually targets underrepresented groups. Additionally, should the FCC decide to implement an S License program, it must adequately track and monitor those entities who receive S Licenses in order to measure how successful the programs is in facilitating spectrum access for diverse groups.

Respectfully Submitted,

_____/s/_____
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August 29, 2008

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A PROPOSAL FOR DIVERSIFYING ACCESS TO DIGITAL TV SPECTRUM



**PRESENTED BY
ANDREW JAY SCHWARTZMAN
PRESIDENT AND CEO, MEDIA ACCESS PROJECT
TO THE FEDERAL COMMUNICATIONS COMMISSION'S EN BANC MEETING
BARNARD COLLEGE
JULY 29, 2008**

The Commission should create a new class of full power commercial TV licenses (Class "S"). Class S licensees would broadcast using the multiplexed facilities of full power commercial digital TV licensees. They would compensate the "main" licensee for services provided in their use of the main licensees' transmitter and transmission facilities. Class S licenses would be conditioned on a requirement that, if the "main" licensee wishes to broadcast in high definition, the Class S licensee must lease spectrum to the "main" licensee for that purpose, for a maximum of six hours per day.

Making spectrum available for Class S usage would be voluntary. Interested full power licensees would assign a portion of their bitstream to a qualified applicant in an arm's-length transaction following the ordinary procedures set forth in Section 309 of the Communications Act.

Qualifications for Class S Licensure

Qualified socially and economically disadvantaged business entities or Class A licensees would be permitted to apply for Class S licenses.

Conditions and Benefits of Class S Licensees

As full power licensees, Class S licensees would be eligible for cable must-carry pursuant to Section 614 of the Communications Act. They would also have the same public interest obligations as other full power TV licensees, except that Class S licensees would not be permitted to carry commercial matter for more than 50% of their broadcast day.

Compensation

Compensation for use of the main licensee's facilities (the "facilities charge") would be determined by baseball-type arbitration with a reserve price that assures amortization of the main licensee's equity.

Compensation for main licensees' use of Class S licensee's spectrum for high definition transmissions would be based on the hourly cost of the facility charge weighted for the time of day of broadcast. The formula would allow for a reasonable rate of return.

Benefits of the Proposal

- Provides a new revenue stream for incumbent broadcasters.
- Promotes diversity in the marketplace of ideas.
- Provides a recognized form of collateral for Class S licensees.
- No legislation is required.